

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2509 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Dhananjay M.Shah .
Versus

. IPCL and another .

Appearance:

MR YN OZA for Petitioner

MR SN SHELAT for Respondent No. 1

MR.D.A.BAMBHANIA,AGP for respondent No.2.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/09/96

ORAL JUDGEMENT

Petitioner at the relevant time was serving under the respondent No.1 Corporation(hereinafter referred to as the "Corporation") as Operator , Grade-III. A disciplinary action was initiated against the petitioner by issuing a chargesheet on 26th/27th July 1984 for an act amounting to "fraud or dishonesty in connection with Corporation's business or property" and "negligence in

discharge of duties". On completion of the inquiry the petitioner apprehended that the petitioner's service would be terminated and he, therefore, preferred this petition under Article 226 of the Constitution of India. Pending the petition, petitioner's service has been terminated on 11th April, 1986. The gravamen of the petitioner's contention is that:

(a) the inquiry initiated against the petitioner is vitiated since the petitioner was not afforded an opportunity of defending his case through a legal practitioner.

(b) the petitioner was acquitted of the same charge in criminal prosecution; and

(c) the petitioner was not furnished a copy of the report of the inquiry officer before the order of termination of the petitioner's service was made.

The petitioner has contended that the presenting officer appointed by the Corporation was a legally trained person and had the expertise in presenting the matter at the inquiry. The Corporation in its affidavit made by the Chief Manager (Personnel and Administration) has denied that the presenting officer was a legally trained person as alleged by the petitioner. It is stated that the presenting officer was the Personnel Manager and had no legal training. It is contended that the petitioner could have represented his case through a fellow workman or through an office bearer of the Trade Union of which he was a member. The petitioner was given an opportunity to requisition the service of the next friend or the office bearer of the Trade Union as contemplated under the Standing Order 20(2). The petitioner, however, chose to defend his case himself. I have perused the imputation of charge made against the petitioner and the nature of evidence relied upon by the Corporation. The imputation of charge did not invoke complicated questions of facts or law. In the circumstances the petitioner was not entitled to defend his case through a legal practitioner. Learned Advocate Mr. Shelat has relied upon the judgment of this court in the matter of K.C. Mani vs. Central Warehousing Corporation and others, (1993(2) GLR p.1845). In view of the observations made by this court in paragraph 6 of the said judgment the impugned order of termination of service cannot be invalidated on the ground that the petitioner was not permitted to engage a legal practitioner to defend his case.

The next contention raised by the petitioner that the impugned order was vitiated since the petitioner was not furnished a copy of the inquiry report before the impugned order was made, is not available to the petitioner in view of the judgment of the Hon'ble Supreme Court in the matter of Union of India vs. Mohamed Ramzankhan (AIR 1991 S.C.475) and in the matter of Commandant, Central Industrial Security Force and others v. Bhopal Singh (AIR 1994 S.C.573). The petitioner's service having been terminated before 20th November, 1990, the petitioner's contention requires to be rejected.

The question whether the disciplinary action can be proceeded further against the delinquent after his acquittal by the criminal court for the same charge is no more res integra. It is well settled proposition that the scope and purpose of disciplinary action is different from that of the criminal prosecution and even after acquittal in the criminal prosecution, a disciplinary action can be initiated or proceeded with further against the delinquent. The principle has been reiterated by the Hon'ble Supreme Court in the matter of Nelson Motis vs. Union of India and another (JT 1992(5)S.C.511). The petitioner has also challenged the validity of the Standing order 20.7 of the Corporation. Said Standing Order empowers the Corporation to take disciplinary action against the workman if his acts or omissions which are subject matter of the criminal proceedings are misconduct under this Standing Order even after his acquittal by the criminal court. In view of the principles laid down in the abovereferred judgment in the matter of Nelson Motis (supra) the challenge to the validity of the above-referred standing order should not survive.

Petitioner has also prayed that the petitioner shall be paid full salary for the period from the date of his acquittal, i.e. from on 21-2-85, by the criminal court. The claim of the petitioner has been resisted by the Corporation and it is submitted that pending trial the petitioner was placed under suspension and the appeal against acquittal preferred by the State of Gujarat was allowed by this court. In view of the above-referred facts the petitioner cannot be held to be entitled to full salary from the date of his acquittal as claimed by him.

In view of the above discussion, I find no merits in any of the contentions raised by the petitioner. The petition is, therefore, dismissed.

Rule is discharged.
